IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.90 of 1989
Date of Decision:10.01.2007

The Commissioner of Income-tax, Amritsar

.....Petitioner

Vs.

M/s Jolly Engineers & Contractors, Amritsar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Sanjiv Bansal, Advocate for the applicant.

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Rajesh Bindal, J.

Following question of law has been referred to this Court for opinion, at the instance of revenue by Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, `the Tribunal') arising out of order passed in I.T.A. No.397/ASR/86 dated 13.11.1986 in respect of assessment year 1971-72:-

> "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the order of the AAC entertaining the appeal already dismissed by his predecessor and setting aside the assessment made by the ITO?"

The facts in much detail are not required to be noticed as we find that the question of law referred to this Court for opinion does not arise out of the order of the Tribunal as the issue was never raised by the revenue before the Tribunal. Still briefly noticing, the facts are that the assessee filed his return of loss on February 25, 1972 which was later on revised on February 6, 1974 by increasing the loss claimed at Rs. 41,522/- as against Rs. 15,157/- declared originally. The assessment was framed under Section 144 of the Income Tax Act, 1961 (for short, `the Act') on May 28, 1976 which was reopened under Section 146 of the Act vide order dated September 30, 1976. Thereafter, the assessment was framed under Section 143(3) of the Act vide order dated February 7, 1979 assessing the income at

Rs. 37,120/- as against the loss claimed by the assessee. As is noticed in the order of CIT(A) that appeal against the order of assessment dated February 7, 1979 was dismissed by the Appellate Assistant Commissioner of Income Tax (for short, `the AAC') vide order dated December 10, 1979 and even the penalty levied under Section 271(1)(c) was upheld up to the Tribunal. The assessee again preferred appeal against the order of assessment dated February 7, 1979 along with an application for condonation of delay on December 23, 1985 which was accepted by the AAC by condoning the delay accepting the reasons given by the assessee and the matter was set aside to the file of Assessing Officer as a whole for de novo assessment. Aggrieved against the order passed by the AAC, the revenue preferred appeal before the Tribunal which was contested on merits but no contention was raised as regards the maintainability of appeal or the entertainment of appeal by the AAC. Accordingly, the issue was never dealt with by the Tribunal. However, on merits of the controversy, the Tribunal found the order passed by the AAC to be valid and dismissed the appeal.

Counsel for the revenue could not dispute the fact that there is not even a whisper about the issue sought to be raised before this Court in the order passed by the Tribunal. The settled position of law could not be disputed that the question of law has to arise out of the order of the Tribunal.

In the question referred, the issue is about the entertainment of second appeal by the AAC when the first appeal was already dismissed. The same having not been raised before the Tribunal cannot be permitted to be raised in present proceedings.

Accordingly, we hold that a question of law referred to this Court does not arise out of the order of the Tribunal.

The reference is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

January 10, 2007 **(M.M.KUMAR)**
renu **JUDGE**